IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

Crl.MC.No. 2180 of 2007()

ST.283/2006 OF THE JFCM COURT IV KOCHI.

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PETITIONER: PETITIONERS:

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1. M/S.MANGALAM HOSPITALS PVT. LTD, BAKERY JUNCTION KOTTAYAM, REPRESENTED BY SAJI VARGHESE, DIRECTOR, M/S.MANGALAM HOSPITALS PVT. LTD., RESIDING AT MANGARAPALLY, PANAYAKKUZHIPPU, KOTTAYAM.

2. SAJI VARGHESE, DIRECTOR, M/S. MANGALAM HOSPITALS PVT. LTD., RESIDING AT MANGARAPALLY, PANAYAKKUZHIPPU, KOTTAYAM.

3. BIJU VARGHESE, DIRECTOR, M/S. MANGALAM HOSPITALS PVT. LTD., RESIDING AT MANGARAPALLY, PANAYAKKUZHIPPU, KOTTAYAM.

BY ADV. SRI.GEORGEKUTTY MATHEW

RESPONDENTS: RESPONDENTS:

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1. M/S.PROMPT ENTERPRISES, 37/318, KESHAV APARTMENTS, SUBASH CHANDRABOSE ROAD, KADAVANTHARA, KOCHI-20. A REGD. PARTNERSHIP FIRM REP. BY P/A HOLDER, MR.V.P.RADHAKRISHNAN, RESIDING AT NRMALALAYAM, JEWEL NAGAR, KADAVANTRA, KOCHI-20.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. NO. 2180 OF 2007

Dated this the 9th day of July, 2007

ORDER

The petitioners are accused 1, 3 and 4 in a prosecution under Sec.138 of the Negotiable Instruments Act. The petitioners 2 and 3 had come before this Court earlier and Annexure-B order was passed in their favour. According to them, the amount due under the cheque is only Rs.5,000/-. As directed by this court, they have already deposited an amount of Rs.6,000/- before the learned Magistrate. The complainant is not yet compounding the offence alleged against them. The petitioners have claimed exemption and they have been exempted from personal appearance. The trial is to proceed. On 30/6/07 when the case came up for hearing, the petitioners were not present. They were laid up due to illness. Their plea was to be recorded by the learned Magistrate.

Application for exemption was filed by the learned counsel for the petitioners. Rejecting that application, the learned Magistrate had directed issue of non-bailable warrants of arrest against the petitioners. The petitioners are aggrieved by the course adopted by the learned Magistrate. The learned counsel for the petitioners submits that following the dictum in **Noorjahan v. Moideen** (2000 (2) KLT 756) the learned Magistrate must have permitted the petitioners, whose personal appearance is exempted, to make their plea through their counsel. This, in short, is the grievance.

2. The learned Magistrate does not appear to have considered this prayer in that dimension. I am, in these circumstances, satisfied that appropriate directions can be issued invoking the powers under Sec.482 of the Cr.P.C. I am satisfied that such direction deserves to be issued in the interests of justice.

3. In the result:

(a) This Crl.M.C. is allowed.

(b) It is directed that the non-bailable warrants of arrest issued against the petitioners shall not be executed.

(c) The petitioners may appear through their counsel before the learned Magistrate and make a fresh request to advance

their plea through their counsel. The learned Magistrate, in the light of the decision in **Noorjahan v. Moideen** (2000 (2) KLT 756), has to consider the said request and pass appropriate orders.

4. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

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//true copy//

P.S. to Judge